

Application No. 10/643,570
Amendment dated 8 July 2004
Reply to Office Action of 29 April 2004

REMARKS/ARGUMENTS

Applicant has received and carefully reviewed the Office Action of the Examiner mailed 29 April 2004. Applicant respectfully traverses all objections, rejections, and assertions made by the Examiner. With this amendment, claims 1, 8, and 11 are amended. Please cancel claim 9 without prejudice. Claims 1-8 and 10-20 are pending.

As an initial matter, please note that the amended specification now includes a claim to priority to U.S. Application No. 10/391,639. This claim for priority is being made within the time limits set forth in 37 CFR §1.78(a).

The Examiner has objected to claim 8 because the phrase "a anionic" should be amended to recite "an anionic" for grammatical purposes. Correction has been made to this claim.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Goffinet* (U.S. Patent 4,414,128). Applicant respectfully traverses this rejection. As stated above, claim 9 is cancelled. Amended independent claims 1 and 11 now recite that the compound of formula (I) is present from greater than 10 to 90 wt% based on total weight of surfactant having an HLB value from 1 to 10, and compound of formula (I). *Goffinet*, in contrast, only appears to disclose the use of a non-aqueous solvent that can be added in amounts up to 10 wt%. Please see: *Goffinet* at column 9, lines 2-34. Accordingly, *Goffinet* fails to anticipate the claimed invention. Applicant respectfully submits that this amendment overcomes the rejection under 35 U.S.C. §102(b).

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 1-20 are provisionally rejected under 35 U.S.C. § 102(e) as being anticipated by co-pending Application No. 10/391,639 (*Griese et al.*). The amended specification now recites that the present application is a continuation-in-part of *Griese et al.* The priority claim is believed to be in compliance with 37 CFR §1.78(a) by sharing at least one common inventor and virtue of it being filed within 16 months of the filing date (March 19, 2003) of the co-pending application. This perfects a claim for priority to *Griese et al.* Because the priority claim is considered timely under 37 CFR §1.78(a), no fee is due. In light of the perfected priority claim, *Griese et al.* does not constitute prior art and cannot be used to support a rejection under 35

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U.S.C. § 102(e). Applicant respectfully submits that this amendment overcomes the provisional rejection.

Obviousness-Type Double Patenting Rejection

Claims 1-20 are provisionally rejected under obviousness-type double patenting as being unpatentable over claims 1, 5-16 and 19-28 of co-pending application No. 10/391,639.

Applicant responds to this rejection by enclosing herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). Although not conceding the merits of this rejection, Applicant respectfully submits that the terminal disclaimer overcomes this rejection.

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CONCLUSION

In view of the above, Applicant respectfully requests withdrawal of the rejections and allowance of the claims. Prompt passage to issue is earnestly solicited. Should the Examiner feel a telephone interview would be helpful in advancing this case to allowance, Applicant invites the Examiner to contact their representative at the number listed below.

Respectfully Submitted,

Date: _____

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